

SENATE BILL 409
By Haynes

AN ACT to amend Tennessee Code Annotated, Title 58,
Chapter 1, to enact the "Service Member's
Employment Tenure Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 58, Chapter 1, is amended by adding
Sections 2 through 7 of this act as a new part.

SECTION 2. The title of this act is and may be cited as the "Service Member's
Employment Tenure Act".

SECTION 3. As used in this act, the term:

- (1) "Department" means the military department;
- (2) "Employer" means every private employer and the state of Tennessee or a
political subdivision thereof;
- (3) "Military service" signifies federal service or active duty with any branch of
service heretofore referred to as well as training or education under the supervision of
the United States preliminary to induction into the military service. The term "military
service" also includes any period of active duty with the national guard of Tennessee
pursuant to the orders of the President of the United States or the Governor. The
foregoing definitions shall apply both to voluntary enlistment and to induction into service
by draft or conscription.
- (4) "Persons in the military service", includes the following persons and no
others: all members of the Army of the United States, the United States Navy, the
Marine Corps, the Air Force, the Coast Guard and all members of the Tennessee

National Guard called into the service or training of the United States of America or of this state.

SECTION 4.

(a) The state is dedicated to the urgent task of strengthening and expediting the national defense under the emergent conditions which are threatening the peace and security of this nation. It is the considered judgment of the general assembly that the wage earners of Tennessee who respond to their country's call to service in this time of crisis, are deserving of every protection of their employment status which the law may afford since any form of economic discrimination against returning service member is a serious menace to the entire social fabric of the United States of America and the state.

(b) By safeguarding the employment and the rights and privileges inhering in the employment contract, of members performing military service, the state encourages its workers to participate to the fullest extent in the national defense program and thereby heightens the contribution of our state to the protection of our heritage of liberty and democracy.

SECTION 5.

(a) Each person in the employ of a private employer or of the state or a political subdivision thereof, except as provided in this section, who, for the purpose of entering the military service, has left or leaves such employ and actually entered the military service as herein defined and who thereafter,:

(1) Receives a certificate or other evidence of honorable discharge or satisfactory completion of such person's military service under the laws of the United States;

(2) Is, at the time of such discharge or completion of such military service, still qualified to perform the duties of the position of employment which the person has left, and

(3) Makes application for re-employment within ninety (90) days after such person is relieved from such military service, or from hospitalization continuing after discharge for a period of not more than one (1) year, shall be restored by such employer to the position of employment which the person left with the same increases in status, seniority and wages that were earned during such person's term of military service by employees in like positions who were on the job at the time such returning service member entered the service, or to a position of like seniority, status and pay, unless such employer's circumstances have so changed as to make it impossible or unreasonable to do so. However, if such employee otherwise qualified for such reemployment is not qualified to perform the duties of the position of employment which the employee has left to enter such military service, by reason of disability sustained during such service but qualified to perform the duties of any other position in the employ of the employer, such person shall be restored to such other position the duties of which the person is qualified to perform as will provide the person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in the person's case, unless, in the case of a private employer, such employer's circumstances have so changed as to make it impossible or unreasonable to do so.

(b) If an employee enters such military service and the position of employment which the person left is filled by one or more employees who later enter such military service, the employees shall, upon release from military service, be given preference in

the matter of employment in the order in which they entered military service, and the employer shall not be required to retain more than one of them in his employ.

(c) Each person in the employ of a private employer or of the state or a political subdivision thereof, except as provided in this section who, for the purpose of entering the military service, has left or leaves such employ but who has been rejected for lack of proper qualifications, shall likewise be restored by such employer to the position of employment which the person left with the same seniority status and wage increases that an employee who was on the job at the time the person left to enter the military service earned during the time such service rejected person was away from such person's employment because of the person's attempt to enter the military service, or to a position of like seniority, status and pay, provided, that at the time of such rejection the person is qualified to perform the duties of the position of employment which such person has left and has made application for re-employment within ninety (90) days after receipt of official notice of such rejection.

(d) The employment restoration provisions of this section do not apply to an employee of the state who was employed before entering or attempting to enter the military service in a position in a department or other agency in the executive branch involving principal administrative responsibility for the determination of policy or for the way such policies are implemented.

SECTION 6.

(a)

(1) An employer's knowing violation of this act is punishable by a civil penalty of one thousand dollars (\$1,000), which may be accessed by the department of the military.

(2) In addition to the imposition of the civil penalty, the military department, upon the filing of a complaint by the person entitled to the benefits of this act, has the power to specifically require such employer to comply with this act and to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action, together with reasonable attorney's fees and costs.

(b) Notwithstanding any other provision of law to the contrary, an employer may have a direct appeal from such penalty directly to the chancery court of the county in which such private employer maintains a place of business; if the state, the chancery court of Davidson County; and if a political subdivision, the chancery court of the county where such employee performs the employee's duties. No fees or court costs shall be taxed against any person applying for the benefits of this act. The court shall, in its sound discretion, give preference to the hearing and disposition of such cases over other matters then pending before it.

SECTION 7. The department shall create a publication setting forth the rights and responsibilities of service members under state and federal law. The department shall make this publication available through printed or electronic means to service members, their families, and organizations that assist service members veterans, or their families.

SECTION 8. This act shall take effect July 1, 2005, the public welfare requiring it.